

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7055 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KASAMBHAI ALIBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR SM MERCHANT for Petitioner

MR. NIGAM SHUKLA, ASSTT. GOVERNMENT PLEADER

for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 12th April, 1996, passed against the petitioner by the Police Commissioner, Ahmedabad City, detaining him under the provisions of the Gujarat Prevention of Anti Social Activities Act,

1985. The detention order was executed on the same day, i.e. on 12th April, 1996, and since then the petitioner is under detention lodged in Bhavnagar Jail, at Bhavnagar.

2. The present Special Civil Application was filed in this Court on 16th September, 1996 and on 18th September, 1996, Rule returnable for 1st October, 1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that five criminal cases under the Prohibition Act with regard to the possession and sale of country liquor were registered against the petitioner. Some of the cases are pending trial in the Court and in some cases, the police investigation was going on at the time when the detention order was passed. After noticing the allegations of those criminal cases, the detaining authority has noticed that the petitioner was engaged in the business of unauthorised sale of country liquor, which was injurious to health. Reference has also been made to the unfortunate incident of Lattakand, which happened in the past, with which the petitioner is not concerned. The detaining authority has noticed that the petitioner is a known bootlegger and was engaged in anti-social activities. Reference has also been made to the incident dated 1st April, 1996. It has been mentioned that the witness, who was passing near the railway level crossing of Gandhinagar, was intercepted by the petitioner and his associates and taking him to be a Police informer, was publically beaten; the witness raised cry and a crowd assembled there and the petitioner ran after the members of the crowd with a knife and threatened them to kill. The members of the crowd became helter-skelter and an atmosphere of terror had been created. With regard to the incident dated 28th March, 1996, it has been mentioned that the witness was present at Chandlodia Gate and, at that time, the petitioner, along with his associates, went to the house of the witness with the stock of liquor and asked the witness to store it in his house. When the witness refused, the petitioner got enraged; took the witness near Chamunda Pan Corner and gave him public beating. The witness cried for help and the people gathered. The petitioner ran after the members of the public with a knife (Churi). People became helter-skelter and an atmosphere of terror was created. In all four witnesses have stated supporting these

incidents against the petitioner. The witnesses have requested that since they are afraid of the petitioner, their identity be kept secret. The detaining authority has invoked provisions of Section 9(2) of the Gujarat Prevention of Anti Social Activities Act, 1985, so as to withhold the names and addresses of the witnesses. The detaining authority has noticed that, although the cases were pending against the petitioner under the Prohibition Act, he was continuing the activities of unauthorised sale of country liquor and has noticed that the proceedings of externment, even if taken against the petitioner, may take a long time and may not serve the purpose to prevent the petitioner from repeating his anti social activities. On these grounds, the detention order was passed by the detaining authority.

4. The detention order has been challenged on more than one grounds, but the learned counsel for the petitioner has stressed the submission that, even if the allegations levelled against the petitioner are taken to be true, they do not constitute a case of breach of public order and at the most, it can be said be a case of breach of law and order. Recently, in a decision rendered by this Court on 4th October, 1996 in Special Civil Application No.3879 of 1996, a considered view has been taken after noticing several decisions of the Supreme Court and this Court that, such allegations and materials do not constitute a case of breach of public order so as to justify the passing of a detention order under the PASA Act. At the most, it can be said to be a case of breach of law and order, on the basis of which the detention order cannot be passed. It has been held and a considered view has been taken that cases of breach of law and order will stand on an entirely different footing than that of breach of public order and in the eye of law, grounds of breach of law and order are not at all germane to consider the passing of detention order under the PASA Act. The decision dated 4th October, 1996, referred to hereinabove fully covers the present case, so as to hold that the detention to be illegal.

5. Accordingly, this Special Civil Application is allowed. The impugned detention order dated 12th April, 1996 passed by the Police Commissioner, Ahmedabad City, against the petitioner is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal. Respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case.

Rule lis made absolute.

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